

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

CITY OF CANTON, an Illinois ) DOCKET NO.  
Municipal Corporation, ) T09-0076  
Petitioner, )  
v. )  
BNSF RAILWAY COMPANY, )  
Respondent. )

In the matter of the petition for an Order of the Illinois Commerce Commission authorizing the construction of a proposed grade crossing at Fourth Avenue and Maple Street in the City of Canton, County of Fulton, State of Illinois, with track belonging to BNSF Railway Company.

Springfield, Illinois  
Wednesday, October 21, 2009

Met, pursuant to notice, at 10:00 a.m.

BEFORE :

MR. JOSEPH O'BRIEN, Administrative Law Judge

APPEARANCES :

MS. CHRISSIE L. PETERSON  
City Attorney  
2 North Main Street  
Canton, Illinois 61520  
Ph. (309) 647-2738

(Appearing on behalf of  
Petitioner)

SULLIVAN REPORTING COMPANY, by  
Carla J. Boehl, Reporter  
CSR #084-002710



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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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CHAD SCHERWINSKI

By Mr. Baldwin	58			
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EXHIBITS

<u>MARKED</u>	<u>ADMITTED</u>
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(None)



1           MR. SALADINO:   Representing Staff for the Rail  
2   Safety Section, John Saladino, 527 East Capitol  
3   Avenue, Springfield, Illinois 62701, and the phone  
4   number is area code (217) 785-8423.

5           MR. BALDWIN:   Your Honor, we have one witness  
6   with us today on behalf of the Railroad.

7           JUDGE O'BRIEN:   Are there any other  
8   appearances?   Let the record show none.   We are now  
9   then ready to proceed to the merits.

10                           Anything preliminarily before we go to  
11   taking that testimony?

12           MR. BALDWIN:   Your Honor, if I can just  
13   summarize, I think we have reached an agreement.  
14   This is continuing on from the interim order that was  
15   recommended to the Commission.   The interim order, of  
16   course, ordered the installation of the new closing  
17   that would be incorporated in the final order.

18                           What we have reserved today was the  
19   Railway's cross petition to close an alternate  
20   crossing in the city of Canton, and also reserved for  
21   today was the issue of crossing protection at the  
22   crossing.

1                   We have reached an agreement with the  
2   City as to the closure of the alternate crossing, and  
3   it is going to be at Hickory Street in the city of  
4   Canton. The City has a new ordinance approved. The  
5   closure won't go into effect until a later date,  
6   which we will hear from the Railroad's witness as to  
7   when that might happen.

8                   And I think we will defer to the  
9   Commission for the recommendation for protection at  
10  this time.

11           JUDGE O'BRIEN: Has there been publication made  
12  of the crossing closure?

13           MR. BALDWIN: The publication wasn't made in  
14  this matter, Your Honor, because the City acted under  
15  the municipal code which has an alternate requirement  
16  for the closure. The City has vacated the crossing  
17  by ordinance.

18           JUDGE O'BRIEN: So both counsels are confident  
19  that no citizen of the city of Canton would have  
20  standing to contest this closure?

21           MS. PETERSON: Yes, Your Honor. And I would  
22  also offer that this matter appeared two separate

1 times pursuant to the municipal code on the city  
2 council's agenda, and no objectors were present at  
3 either one of those meetings to present any objection  
4 to this matter.

5 JUDGE O'BRIEN: Is Staff in agreement with  
6 their assessment of this matter?

7 MR. SALADINO: Yeah, I would agree with --

8 JUDGE O'BRIEN: Off the record just a second.

9 (Whereupon there was then had an  
10 off-the-record discussion.)

11 MR. SALADINO: Staff has no objection to the  
12 closure. I agree with the counsels for the City and  
13 the Railroad.

14 JUDGE O'BRIEN: Sir, you previously testified,  
15 is that correct?

16 THE WITNESS: That is correct.

17 JUDGE O'BRIEN: You were previously sworn?

18 THE WITNESS: Yes.

19 JUDGE O'BRIEN: And you understand you are  
20 still under oath?

21 THE WITNESS: I do.

22 JUDGE O'BRIEN: Proceed, please.

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CHAD SCHERWINSKI

called as a witness on behalf of BNSF Railway  
Company, having been first duly sworn, was examined  
and testified as follows:

DIRECT EXAMINATION

BY MR. BALDWIN:

Q. State your name for the record, please.

A. Chad Scherwinski, S-C-H-E-R-W-I-N-S-K-I.

Q. Mr. Scherwinski, what is your position with  
the Railroad?

A. Manager of Public Projects.

Q. And the last time we were here there was  
some testimony given regarding the possibility of  
leasing the subject railroad trackage to another  
railroad, correct?

A. That is correct.

Q. And what is the current status of those  
negotiations?

A. At the time the interim order was entered,  
BNSF was in negotiations with KJRY over short lining  
this segment of railroad. Since that time the  
negotiations have fell through and BNSF will not be



1 short lining this segment of track. We will hold it  
2 as a service track.

3 Q. Current plans for the use of this track is  
4 that it is to remain inactive until a future date?

5 A. That is correct.

6 Q. And is it a possibility that this line may  
7 at some point in the future be reactivated to reopen  
8 it for rail traffic?

9 A. That is correct.

10 Q. There is no intention of abandoning the  
11 line, is there?

12 A. No, there is not.

13 Q. And you are asking the Commission today to  
14 recommend that an order be entered granting the --  
15 ordering the installation of the new crossing in a  
16 final order at Maple Street, correct?

17 A. Yes.

18 Q. And you are also asking that it recommend  
19 that the closure of Hickory Street crossing, which  
20 has been approved by the City of Canton under  
21 Ordinance Number 1992, also be ordered, is that  
22 correct?

1           A.    That is correct.

2           Q.    And is it further your understanding that,  
3   pursuant to your BNSF Railway Company's agreement  
4   with the City of Canton and Canton's approval of  
5   Ordinance Number 1992, that BNSF will provide 180  
6   days notice to the City should it intend to  
7   reactivate the rail line?

8           A.    We will provide that notice for the closure  
9   of Hickory Street.

10          Q.    And once that notice is provided, then it  
11   is your understanding that the City would then be  
12   obligated to close the crossing at Hickory Street,  
13   correct?

14          A.    Yes.

15          Q.    And, furthermore, you are asking them to  
16   approve the Staff's recommendation, whatever the  
17   Staff recommends, for protection at this crossing?

18          A.    That is correct.

19          Q.    Even though at the current time it is  
20   considered an active line?

21          A.    That is correct.

22          Q.    And is it your understanding that the

1     Railway's agreement with the City is that in the  
2     event that the line intends to become reactive, that  
3     the Railway will petition the Commission for  
4     determination of appropriate crossing protection?

5             A.     That is correct.

6             Q.     And that the City will be responsible for  
7     any costs associated with any change in crossing  
8     protection that is then to be determined by the  
9     Commission?

10            A.     That is the understanding.

11            MR. BALDWIN:   We have nothing further.

12            JUDGE O'BRIEN:   Cross examination?

13            MS. PETERSON:   No questions for this witness,  
14     Your Honor.

15            JUDGE O'BRIEN:   Staff?

16            MR. SALADINO:   No, Your Honor.

17            JUDGE O'BRIEN:   I have no questions.   Thank  
18     you.

19                               (Witness excused.)

20            JUDGE O'BRIEN:   Anything further on behalf of  
21     the Respondent Railroad?

22            MR. BALDWIN:   No, Your Honor.

1 JUDGE O'BRIEN: Anything on behalf of the  
2 Petitioner?

3 MS. PETERSON: No, Your Honor.

4 JUDGE O'BRIEN: Staff?

5 MR. SALADINO: Your Honor, Staff would just  
6 recommend that, since the line is inactive at this  
7 point, the interim order is already established,  
8 permission for the City to put in a new crossing  
9 there, Staff would recommend that there are no  
10 warning devices put up at this point. We think that  
11 if we put up cross bucks with exempt status, it may  
12 just confuse people. And since we know there is not  
13 going to be anything run on the track without  
14 extensive rehabilitation of the line, we feel  
15 confident that for the safety of the traveling public  
16 we don't need any warning devices at all. So that  
17 would be our recommendation.

18 JUDGE O'BRIEN: So you are ready to mark the  
19 case heard and taken and submit a final order?

20 MR. SALADINO: I believe we are.

21 MR. BALDWIN: Your Honor, if I could make one  
22 more matter of record. At the current time the

1     Railway and the City are still undertaking  
2     negotiations to secure the easements for the approach  
3     over the Railroad's right-of-way for this crossing,  
4     and we just ask that that be taken as a finding  
5     subject to the opening up of the new crossing.

6             JUDGE O'BRIEN:   Off the record just a second.

7                             (Whereupon there was then had an  
8                             off-the-record discussion.)

9             JUDGE O'BRIEN:   Back on the record then.   Would  
10    the Petitioner waive a proposed order in this  
11    proceeding?

12            MS. PETERSON:   Yes.

13            JUDGE O'BRIEN:   Would the Respondent waive a  
14    proposed order in this proceeding?

15            MR. BALDWIN:    Yes.

16            JUDGE O'BRIEN:   Anything further before we mark  
17    the case heard and taken?

18            MR. SALADINO:   No, Your Honor.

19            JUDGE O'BRIEN:   Having all the evidence before  
20    me, then I direct the case be marked heard and taken.

21                             HEARD AND TAKEN

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